

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re OPENWAVE SYSTEMS, INC.,
SHAREHOLDER DERIVATIVE LITIGATION

No. C 06-03468 SI

**ORDER DENYING PLAINTIFFS'
MOTION TO STAY; ALLOWING TWO
DAY EXTENSION OF TIME TO FILE
AMENDED COMPLAINT; AND
CONTINUING CASE MANAGEMENT
CONFERENCE**

This Document Relates To:

ALL ACTIONS.

Plaintiffs have filed a motion to stay this litigation pending consideration of a demand by the board of directors of nominal defendant Openwave Systems, Inc. The stay motion is scheduled for hearing on April 18, 2008. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument, and hereby VACATES the hearing.

Plaintiffs' amended complaint was due on February 29, 2008. On February 27, 2008, plaintiffs filed a motion for extension of time until March 14, 2008, to amend their complaint. On March 7, 2008, the Court granted an extension but required plaintiffs to file their complaint by the end of that day. Plaintiffs did not do so, and still have not filed an amended complaint. Instead, plaintiffs filed the current motion to stay, explaining that they planned to make a demand on the current directors and that this action, in which plaintiffs had pursued a theory of demand futility, should be stayed pending the consideration of the demand. Defendants vigorously oppose the motion, and plaintiffs have failed to reply to defendants' arguments. Because the Openwave directors have not yet refused the demand, the Court agrees with defendants that plaintiffs may not yet bring a suit alleging wrongful refusal of a demand. In addition, plaintiffs have put forth no legal support for their suggestion that the Court stay this litigation. The Court therefore DENIES plaintiffs' motion to stay.

1 Although the Court has concerns that by making a demand, plaintiffs may have conceded that
2 demand would not be futile, the Court will permit plaintiffs to file an amended complaint, should they
3 wish to do so. The Court notes that it inadvertently granted plaintiffs an extension of time on the same
4 day the amended complaint was due. **Therefore, if plaintiffs wish, they may file an amended**
5 **complaint within two days of the date of this order, i.e., no later than Friday, April 18, 2008.**

6 **The case management conference currently scheduled for April 18, 2008 is continued until**
7 **Friday, June 20, 2008 at 2:30 p.m.**

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9 **IT IS SO ORDERED.**

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11 Dated: April 16, 2008

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14 SUSAN ILLSTON
15 United States District Judge
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